

not hold the asset account and no agreement exists between the service provider and the account at the institution. The transfers initiated by the service-providing institution are often cleared through an automated clearinghouse (ACH). This section divides the responsibilities between the two institutions with the greater responsibility placed on the service-providing institution.

The responsibilities of the service-providing institution are set forth in Section 205.14(b)(1) and (2). The duties of the account-holding institution are found in Section 205.14(c)(1) and (2).

Electronic Fund Transfer of Government Benefits – §205.15

Section 205.15 contains the rules that apply to electronic benefit transfer (EBT) programs. It provides modified rules on the issuance of access devices, periodic statements, initial disclosures, liability for unauthorized use, and error resolution notices.

Section 205.15(a) provides that a government agency is deemed to be a financial institution and subject to the regulation, if it directly or indirectly issues an access device to a consumer for use in initiating an EFT of government benefits from an account. Needs-tested EBT programs established under state or local law or administered by a state or local agency (such as food stamp programs) are exempt. Federally administered EBT programs and state and local employment-related EBT programs (such as retirement and unemployment benefits) remain covered by Regulation E. The term account means an account established by a government agency for distributing government benefits to a consumer electronically, such as through ATMs or point-of-sale terminals.

A government agency need not furnish the periodic statement required by §205.9(b) if the agency makes available to the consumer:

- the consumer's account balance through a readily available telephone line and at a terminal; and
- a written history of the consumer's account transactions that covers at least 60 days preceding the date of the consumer's oral or written request.

A government agency that does not furnish periodic statements in accordance with the above shall be subject to special modified requirements as set forth in §205.15(d).

Disclosures at Automated Teller Machines - §205.16

Section 205.16 requires disclosures at ATMs, before a fee can be charged to the consumer. This applies when a consumer

uses an ATM that is operated by a financial institution or other company that does not hold the consumer's account.

In these cases, the operator of the ATM must disclose the fact that a fee will be charged for providing EFT services or a balance inquiry, AND the amount of the fee. The ATM operator may post this information in prominent and conspicuous location on or at the ATM. Alternatively, the operator may provide the notice on the ATM screen or on paper, before the consumer is obligated to pay a fee.

An ATM operator may only impose a fee on a consumer initiating an EFT service or balance inquiry if the consumer is provided with the required notices AND elects to continue the transaction after receiving the notice.

Requirements for Electronic Communications – §205.17

Section 205.17 contains the rules for electronic delivery of required disclosures, when consumers have consented to receive them electronically. A financial institution that delivers disclosure electronically has two options under the regulation. The financial institution must:

1. Send the disclosure to the consumer's electronic address; or
2. Make the disclosure available at another location such as an Internet web site; AND
 - i. Alert the consumer of the disclosure's availability by sending a notice to the consumer's electronic address (or to a postal address, at the financial institution's option). The notice shall identify the account involved and the address of the Internet web site or other location where the disclosure is available; and
 - ii. Make the disclosure available for at least 90 days from the date the disclosure first becomes available or from the date of the notice alerting the consumer of the disclosure, whichever comes later.

When a disclosure provided by an electronic means is returned to a financial institution as undeliverable, the financial institution shall take reasonable steps to attempt redelivery using information in its files.

Suspension of Obligations – §912; Waiver of Rights – §914

Section 912 suspends, under certain conditions, a consumer's obligation to another person in the event a malfunction in an EFT system prevents payment to the person, until the malfunction is corrected and the EFT may be completed.

Section 914 states that no writing or other agreement between a consumer and any other person may contain any provision that constitutes a waiver of any right conferred or cause of action created by the EFTA. However, Section 914 does not prohibit any writing or other agreement that grants a consumer greater protection or a more extensive right or remedy than that provided by the EFTA or a waiver agreement to settle a dispute or action.

**Liability of Financial Institutions – §910;
Civil Liability – §915;
Criminal Liability – §916**

Section 910 provides that institutions subject to the EFTA are liable for all damages proximately caused by failure to make an EFT in accordance with the terms and conditions of an account, in a timely manner, or in the correct amount, when properly instructed to do so by a consumer. However, Section 910 also sets forth certain exceptions when an institution would not be liable for failing to make an EFT. Section 910 also provides that institutions are liable in certain circumstances for failure to make an electronic fund transfer due to insufficient funds and failure to stop payment of preauthorized debits.

A financial institution may also be liable for civil damages if it fails to comply with the EFTA. The civil liability provisions are found in §915. The damages an institution would have to pay in a successful individual action are actual damages and statutory damages between \$100 and \$1,000, as determined by the court. In a successful class action suit, the institution would have to pay actual damages and statutory damages up to the lesser of \$500,000 or 1% of the institution's net worth. In both successful individual and class actions, court costs and a reasonable attorney's fee would be recovered by the consumer.

The institution generally will not be liable for violations caused by unintentional bona fide errors that occurred despite the maintenance of procedures reasonably adopted to avoid such errors. Also, the institution will not be liable if it acted in accordance with an official interpretation issued by the Board of Governors of the Federal Reserve System or its authorized staff. An institution cannot be held liable for improper disclosure if it utilized in an appropriate manner a model clause approved by the Board of Governors. Further, an institution can avoid liability by notifying the consumer of a violation, taking corrective action, including adjustment to the consumer's account and payment of appropriate damages prior to a court case.

Section 916 sets forth provisions for criminal liability. Penalties under these provisions run from a \$5,000 fine or imprisonment of not more than one year, or both, for knowing

and willful failures to comply with the EFTA, up to a \$10,000 fine or imprisonment of not more than ten years, or both, for the fraudulent use of a debit card.

Examination Objectives

1. To determine that the institution has procedures in place to ensure compliance with the Electronic Fund Transfer Act.
2. To determine that the institution is in compliance with the provisions of the Electronic Fund Transfer Act.

Examination Procedures

1. Determine if access devices contain credit privileges in order to evaluate compliance with applicable portions of Truth in Lending. [§205.12(a)]
2. Obtain and review copies of the following:
 - a. Disclosure forms.
 - b. Account agreements.
 - c. Procedural manuals and written policies.
 - d. Merchant agreements.
 - e. Automated teller machine receipts and periodic statements.
 - f. Error resolution statements/files.
 - g. Form letters used in case of errors or questions concerning an account.
 - h. Any agreements with third parties allocating compliance responsibilities.
 - i. Consumer complaint file.
3. Test for compliance with written policies and internal controls while performing the examination procedures.
4. For each type of EFT service provided, review items given to customers at the time an account is opened, or prior to the first EFT transaction, to determine that all required disclosures are furnished. [§205.7]
5. If the institution has changed the terms or conditions since the last examination that required a written notice to the customer, determine that the proper notice was provided in a timely manner. [§205.8(a)]
6. Review a sample of periodic statements to determine that they contain sufficient information for the consumer to adequately identify transactions and that they otherwise comply with regulatory requirements. [§205.9]
7. Review consumer complaints regarding EFT transactions to determine compliance with the error resolution procedures and to isolate any apparent deficiencies in the institution's operations. [§205.11]
8. Review policies regarding liability for unauthorized transfers. [§205.6]